

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC LAND APPEAL NO E059 OF 2025

DANIEL RUTO.....
APPLICANT

VERSUS

EUNICE CHEPNGETICH (Suing as the Legal Representative
to the Estate of Tabsabei C. Maina (deceased)
.....**RESPONDENT**

RULING

1. This ruling is in respect of a Notice of Motion application dated 24th September, 2025, by the Applicant seeking the following orders:
 - a) *Spent*
 - b) *Spent*
 - c) *THAT this honourable court be pleased to stay execution of the judgment delivered by Hon. Cynthia Muhoro on 4th September 2025, and its subsequent orders thereto pending the hearing and determination of the appeal herein.*
 - d) *THAT the costs of this Application be provided for.*

2. The application is supported by the annexed affidavit of Daniel Ruto, the Applicant, sworn on 24th September, 2025, who deponed that the Respondent filed Nakuru CMCC No 7 of 2010 seeking an injunction against him and judgment was entered in favour of the Respondent on 4th September, 2025. He further deponed that he has lodged an appeal and that the Respondent has been threatening to evict him from the suit land.

3. It was his deposition that he stands to suffer irreparable loss as he has made massive investments in the suit land where he has constructed a matrimonial home for his family where they have been residing since 1999. The applicant deponed that the intended appeal will be rendered nugatory if stay is not granted.
4. Eunice Chepngetich, the Respondent, filed a Replying Affidavit sworn on 23rd October, 2025, and deponed that the trial court in its judgment dated 4th September, 2025, correctly found that Land Parcel Number Shawa/Gicheha Block 2/114 (Rongai) belongs to her late mother, Tabsabei Chepkurui Maina. It was her deposition that the applicant has not offered any security as a condition for stay pursuant to Order 42 Rule 6 (2) of the Civil Procedure Rules, and prayed that the Notice of Motion application dated 24th September, 2025, be dismissed with costs.

APPLICANT'S SUBMISSIONS

5. Counsel for the Applicant filed submissions dated 12th November, 2025, and identified the following issues for determination:
 - a) *Whether the orders sought should be granted?*
 - b) *Who should bear the costs of this application?*
6. On the first issue, counsel relied on provisions of Order 42 Rule 6 (2) of the Civil Procedure Rules and submitted that the application was filed without unreasonable delay as judgment was delivered on 4th September, 2025, and the application was filed on 24th September, 2025, within the thirty-day stay period granted by the lower court. On the issue of substantial loss, counsel submitted that the execution of the lower court judgment will render the appeal nugatory and will entail demolition of the Applicant's massive

developments on the suit land as he has lived there with his family for over twenty-five years and constructed his matrimonial home on the land.

7. On the issue of security for costs, the applicant submitted that the impugned judgment and any consequential decree issued is non-monetary in nature and as such does not attract any security for costs and relied on the case of **Waithaka & 26 others (Suing as the registered Official and Representative of Ruai Squatters Welfare Society) vs City Council of Nairobi & 7 others [2025] KEELC 3198 (KLR)**.
8. On the second issue, counsel submitted that the costs of the application should abide by the outcome of the appeal, and relied on the case of **Jasbir Singh Rai & 3 others vs Tarlochan Singh Rai & 4 others [2014] eKLR**, and urged the court to allow the application as prayed.

RESPONDENT'S SUBMISSIONS

9. Counsel for the Respondent filed submissions dated 19th November, 2025, and identified the issue for determination as whether the applicant has satisfied the legal threshold for the grant of a stay of execution pending an appeal under Order 42, Rule 6 of the Civil Procedure Rules. Counsel submitted that the probability of success or otherwise of the appeal is not one of the factors to be considered in an application under Order 42 Rule 6 of the Civil Procedure Rules, and relied on the case of **Vishram Ravji Halai vs Thornton & Turpin [1990] KLR 365**.
10. Counsel submitted that the applicant has not demonstrated how he will suffer substantial loss and relied on the cases of **China City Construction Company Limited & another vs Karisa (Suing as the Administrator and Legal Representative of the Estate of the Late Didlora Mwaka Mwangala)**

[2024] KEHC 3323 and James Wangalwa & another vs Agnes Naliaka Cheseto [2012] eKLR.

11. On the issue of whether the application was filed without unreasonable delay, counsel submitted that while there is no substantial delay in bringing the application, the principle of finality requires that there must be an end to litigation at some point. Counsel submitted that the matter has been in court for fifteen years.
12. On the issue of security, counsel submitted that should this honourable court be inclined to grant stay as prayed, the applicant should be ordered to deposit security of not less than Ksh 500,000/= in court to cater for the damages likely to be occasioned to the Respondent by the continued use of the land by the applicant and relied on the case of **Fazal vs Lias [2024] KEHC 8175 (KLR)**.
13. Counsel prayed that the application be dismissed with costs to the Respondent and relied on the cases of **Macharia vs Insurance Regulatory Authority & 5 others [2025] KEHC 6958 (KLR)** and **Supermarine Handling Services Ltd vs Kenya Revenue Authority [2010] eKLR**.

ANALYSIS AND DETERMINATION

14. The issue for determination is whether the applicant has met the threshold for the grant of stay of execution as per Order 42 Rule 6 of the Civil Procedure Rules which provides as follows:

“(2) No order for stay of execution shall be made under subrule (1) unless—(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

15. On whether the application has been made without unreasonable delay, the judgment was delivered on 4th September, 2025, and the application was filed on 24th September, 2025 which shows that the same was filed timeously.
16. On whether the applicant shall suffer substantial loss if the stay orders are not granted, the applicant contends that the execution of the lower court judgment will render the appeal nugatory and will entail demolition of the applicant’s massive developments on the suit land as he has lived there with his family for over twenty-five years and constructed his matrimonial home on the land.
17. In the case of **Samvir Trustees Ltd. –vs- Guardian Bank Ltd. (Nairobi (Milimani) HCCC No. 795 of 1997**, the court held that:

“... For the applicant to obtain a stay of execution, it must satisfy the court that substantial loss would result if no stay is granted. It is not enough to merely put forward mere assertions of substantial loss, there must be empirical or documentary evidence to support such contention. It means the court will not consider assertions of substantial loss on the face value but the court in exercising its discretion would be guided by adequate and proper evidence of substantial loss ...”
18. The fact that the Applicant has done massive development on the suit land is not a ground to substantiate substantial loss as the court had found in its judgment that his occupation of the suit land was illegal. The court has to balance the rights of the successful litigant to enjoy the fruits of the judgment, and the Applicant’s right of appeal.

19. On the issue of security for the due performance of the decree, the Applicant contends that the impugned judgment and any consequential decree issued is non-monetary in nature and as such does not attract any deposit of security. In the case of **Arun C Sharma v Ashana Raikundalia t/a A Raikundalia & Co Advocates & 2 others [2014] eKLR** the court held as follows:

“The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the Judgment debtor...Civil process is quite different because in civil process the Judgment is like a debt hence the 1st applicant become and are Judgment debtors in relation to the respondent. That is why any security given under Order 42 rule 6 of the Civil Procedure Rules acts as security for due performance of such decree or order as may ultimately be binding on the 1st applicant. I presume the security must be one which can serve that purpose.”

20. The grant of stay of execution is discretionary and such discretion must be exercised judiciously, as was held in the Court of Appeal case of **Butt v Rent Restriction Tribunal (1982) KLR 417** which provides guidance on how a court should exercise discretion and held that:

- 1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.*
- 2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s discretion.*

- 3. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of proceedings.*
- 4. The court in exercising its discretion whether to grant (or) refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal.*
- 5. The court in exercising its powers under Order XLI rule 4 (2)(b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse’.*

21. In the interest of justice, I allow the application on condition that the Applicant deposits Kshs. 200,000/ in a joint interest earning account of the Advocates on record for the parties within 30 days failure to which the order lapses. Costs of the application to abide by the outcome of the appeal.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 19TH DAY OF JANUARY 2026.

**M. A. ODENY
JUDGE**